A.F.R.

HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
FIRST APPEAL NO. 82 of 2004

Appellant : Defendant	Nirmala, aged about 32 years , W/o Ramesh Kumar Rathore, D/o Rameshwar Prasad Rathore, R/o Kirari, Police Station Baradwar, Tehsil Sakti, District Janjgir-Champa (CG)
	Vs.
Respondent: Plaintiff	Ramesh Kumar S/o Dhaniram Rathore Senior Technician (Geology), Employee No.212499, Mechanical Mines, Rajahara, Bhilai Steel Plant, Rajahara, District Durg (CG)

PRESENT:

Shri HS Patel, Counsel for the appellant.

Shri Ashish Shrivastava with Shri Rakesh Dubey, Counsel for the respondent.

J U D G M E N T

(Dated 16th February 2006)

This appeal has been directed against the judgment and decree dated 04.03.2004 passed by Additional District Judge, Sakti, Dist-Janjgir Champa in Civil Suit No.13-A/2003 whereby the petition field by the respondent / plaintiff under Section 13 of the Hindu Marriage Act 1955 (henceforth "the Act") has been allowed and decree of divorce has been passed.

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2) Material facts in brief for disposal of this appeal are that the marriage between respondent / plaintiff - Ramesh Kumar and appellant / defendant - Nirmala was solemnized on 20.04.1996 as per Hindu rituals and thereafter, they started living as husband and wife in their matrimonial home. Appellant/defendant left the house of her husband on 04.09.1996; who despite several efforts made by the respondent/plaintiff, did not come back. Thereafter on 06.02.1997, appellant and respondent dissolved their marriage by customary divorce and since then they are living separately. On these grounds, respondent/plaintiff filed an application under Section 13 of the Act for a decree of divorce. The appellant/defendant denied the allegations leveled against her and pleaded that on 04.09.1996, she was beaten by her husband on the demand of dowry and was thrown out from her matrimonial house. Thereafter, she made various attempts to live with her husband, but respondent/plaintiff refused to keep her. Divorce papers have been got signed by her, keeping her under threat.

3) Both the parties adduced evidence in respect of their cases. Learned Court below, after appreciation of evidence, held that there was no dispute regarding dowry between the parties. On 06.02.1997, customary divorce took place between the parties. They consented to it and thereafter, accepting it, are living separately. Learned court below, confirming the customary divorce dated 06.02.1997, granted a decree of divorce from 04.03.2004.

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4) Both the parties are heard. Record of the trial Court perused.

5) Respondent - husband filed an application under, Section 13 of the Act disclosing that on 06.02.1997, customary divorce took place between him and his wife Nirmala. When he himself is pleading that the relation of husband and wife remains no more since 06.02.1997, he was not entitled to file an application under Section 13 of the Act, which authorised only the husband or wife to file application for divorce.

6) The divorce has been granted only on the basis that husband and wife are living separately since last six years. Although learned Court below has held that appellant/wife - Nirmala has deserted her husband since 04.09.1996 but the findings given against the issues are against their own decision that contains in para 14 of the judgment. In para 14, lower Court has decided and held that husband and wife, accepting customary divorce dated 06.02.1997, are living separately. When both the parties are living separately by mutual agreement, then it can not be treated a desertion. The ground taken by the respondent/plaintiff was neither as per pleading desertion, nor as per decision of the trial Court desertion has been proved.

7) Neither the respondent's petition filed under Section 13 of the Act was maintainable nor any ground envisaged in it has been pleaded or proved; set apart, under Section 13 of the Act, lower Court

(67)

has no power or authority to confirm the customary divorce by passing a decree of divorce. Therefore, the judgment and decree passed by the lower Court is liable to be set aside.

8) In the result, the appeal succeeds and the impugned judgment and decree passed by the lower Court is set aside.

Sd/-
V.K. Shrivastava
Judge
16.02.2006

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